In the High Court of Judicature for Rajasthan Jaipur Bench

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Cr. Misc. Petition No.686/2000
Anil Kumar ***Versus*** State.

Date of Order ::: 18/09/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Vipul Jaiman for Mr. S.S.Sunda, for petitioner
Mr. Arun Sharma, Public Prosecutor for State.

Petitioner has invoked inherent powers of this Court U/s 482 CrPC for quashing proceedings initiated against him for offence U/s 7/16 of Prevention of Food Adulteration Act, 1954 (“**the Act**”) in Cr.Case No.445/2000 pending before ACJM, Behror.

Food Inspector checked shop of M/s Anil Kumar Suresh Chand on 11/04/1989 and took sample of sugar, which was sealed and sent to Public Analyst – on analysis whereof, sample of sugar was found to be adulterated, hence a complaint was filed before Chief Judl. Magistrate, Alwar on 16/06/90 – on which summons were issued on 22/06/90 – in pursuance whereof petitioner appeared on 23/08/90 and submitted bail bonds. As is apparent from order dt.18/12/90, accused deposited requisite fee and sample for re-analysis through Central Laboratory Calcutta and

that sample was sent - its report was received as has been taken note of in the order dt.29/10/91 and matter was fixed for pre-charge evidence on 14/02/92. From order sheets it appears that matter continued in process for summoning Food Inspector who could not have served for one reason or the other till 17/12/94. On that day, learned Magistrate proceed for summary trial and accordingly, charge U/s 7/16 of the PFA Act was read over and the substance of accusation was explained to which the accused denied and pleaded for trial and accordingly matter was posted for summoning prosecution witnesses so as to record their statements on 22/04/95. But again prosecution witnesses could not be summoned and served upto 17/09/97 – as per order sheet whereof, since there was order for denovo trial, substance of charge was again read over and explained to which also he denied and pleaded for trial and matter was fixed for prosecution evidence. On 12/06/98 statement of Food Inspector (Pw1) was recorded while statement of Bhawani Shanker (Pw2) was recorded on 20/03/99. As per order 27/08/99, Asstt. Public Prosecutor prayed for denovo warrant trial, to which defence counsel did not object and after hearing parties,

learned Chief Judl. Magistrate ordered U/s 16(A) of PFA Act to conduct warrant trial and transferred the case to ACJM No.1, Alwar – as a consequence whereof, as is apparent from order sheets, matter continued for process of summoning witnesses for pre-charge evidence and the prosecution failed to produce witnesses despite summons being issued till 16/08/2000 and on that day, the case was sent to the CJM Alwar for transfer of the case to ACJM, Behror. Hence the petitioner has approached this Court to invoke powers U/s 482, CrPC. On 06/09/2000, the record was called by this Court.

Main thrust of contention advanced by Counsel for the petitioner is that criminal case launched for prosecution of petitioner has been lingering on for one or the other reason since 16/06/90 when complaint was filed by Food Inspector and despite ten years having rolled by till instant petition was filed on 21/08/2000, no effective proceedings have taken place before the court below where prosecution has not taken sincere efforts to produce its evidence in summary trial and even in course of denovo warrant trial, during which petitioner has co-operated by putting his appearance whenever

required and thus in summary or warrant cases, trial has not been concluded by efflux of ten years period, which has resulted in infringement of his right of speedy trial as guaranteed under Art.21 of Constitution of India; therefore, criminal proceedings pending against him deserve to be set aside. In support, Counsel placed reliance on the judgments of this Court in **Anil Kumar Vs. State (1997 CrLR (Raj.)699); Gokul Das Vs. State (1998 CrLR (Raj)718); Kewal Chand Vs. State (1999 CrLR(Raj) 114) and Heeraram Sirvi Vs. State (1999 CrLR (Raj) 265).**

Public Prosecutor opposed this petition and submits that allegation against petitioner in criminal case are of serious nature for offence under PFA Act; and if this Court considers it proper, the trial court be directed to complete trial expeditiously.

I have considered rival contentions of both the parties and with assistance examined material on record. In **Anil Kumar Vs. State** (supra) this Court has taken note of a series of decisions wherein criminal proceedings in the facts of given case have been quashed on the ground of delay in trial. In **Heera Ram Sirvi Vs.**

State (supra), this Court observed ad infra:

> “**4.** It is the duty of the trial Court and all the more of prosecution to expeditiously conclude the trial. The right of the accused for expeditious trial has been now treated as a fundamental right and if the delay is occasioned without his fault and particularly due to the lapse on the part of the prosecution, it is an infringement of his such fundamental right. In this case barring few dates on which adjournments were made due to some unavoidable reasons, mostly the delay has resulted due to the fault of prosecution for not producing or getting served its witnesses. In these circumstances, I am inclined to agree with the learned counsel or the petitioner that allowing to continue these proceedings even after 14 years would amount to abuse of the process of law and injustice to the petitioner, who has already suffered mental and physical strain by regularly attending the courts for last 14 years and obviously also financial loss.”

From narration of facts borne out from various orders passed by trial Court in course of trial in instant case, it is clear that in course of summary as well as even in denovo warrant trial

proceedings, prosecution has completely failed to take effective steps to get its evidence recorded with all promptitude despite ten years have been rolled by. Be that as it may, proceedings have lingered on for one or the other reason and could not be concluded. The record also does not show that pendente proceedings there has been delay attributable to petitioner; while it appears on record that he has been regularly putting his appearance and was co-operating in course of trial.

It is the duty of Court to issue process for procuring attendance of witnesses and also to take further necessary steps to ensure their attendance inasmuch as simultaneously it may not absolve the prosecution as well from making efforts to ensure that witnesses are served through summons issued by Court as prosecution alone has to assist the Court to expedite the trial.

In the facts of instant case, this Court is of the opinion that the petitioner who regularly attending the court for almost more than (10) years if still is allowed to be prosecuted any further at no fault on his part, will be nothing but a clear abuse of process of

court and such proceedings pending for inordinate delay deserves to be quashed and set aside.

Consequently, misc. petitions succeeds and and is hereby allowed alongwith stay petition No.463/2000. Proceedings against petitioner for offence U/s 7/16 of PFA Act, in Cr.Case No.445/ 2000 pending before ACJM, Behror are hereby quashed and set aside. Bail Bonds furnished by petitioner stands discharged. Record be sent back forthwith to the trial court.

(**Ajay Rastogi), J.**

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